



DIVISIONS  
ENERGY  
GAS AND OIL  
MINED LAND RECLAMATION  
MINERAL MINING  
GEOLOGY AND MINERAL RESOURCES  
MINES  
ADMINISTRATION

# COMMONWEALTH of VIRGINIA

*Department of Mines, Minerals and Energy*

P.O. Drawer 900  
3405 Mountain Empire Road  
Big Stone Gap, Virginia 24219-0900  
(276) 523-8100 Fax (276) 523-8148  
www.dme.virginia.gov

July 8, 2010

Mr. W. David Barnette  
Barnette Energy, LLC  
P. O. Box 859  
Wise, Virginia 24273

Certified Mail Return  
Receipt No. 7009 2250 0003 2393 3693

Re: Informal Hearing Decision – Fact of Violation CO# HNM0003605, Violation 1 of 1 on Barnette Energy LLC , Permit Number 900314Z

Dear Mr. Barnette:

An informal hearing was held on July 6, 2010, to review the decision of The Department of Mines Minerals and Energy's Division of Mined land Reclamation issuance of Order of Cessation HNM0003605, Violation 1 of 1, to Barnette Energy LLC, permit number 900314Z.

**Based upon the attached opinion of the Informal Hearing Officer, I am affirming the issuance of Order of Cessation 900314Z.**

Please be advised that you may request a formal public hearing under 4 VAC 25-130-843.16(a) of the regulations to contest the fact of issuance of the notice of violation. Your written request must be submitted to the attention of the Hearings Coordinator within 15 days from your receipt of this decision. Please be advised that the party requesting formal review shall bear the burden of proof at the formal hearing. Should you have any questions concerning the formal hearing process, please call Harve Mooney, Hearings Coordinator, at (276) 523-8271.

Respectfully,

Gavin M. Bledsoe  
Reclamation Services Manager

c: Heather McDonald-Taylor  
James Meacham  
Chris Perry  
David Barnette  
Horace Garrison Hill  
Michael Giles, Informal Hearing Officer

March 2008

EQUAL OPPORTUNITY EMPLOYER  
TDD (800) 828-1120 - Virginia Relay Center



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES, MINERALS AND ENERGY  
DIVISION OF MINED LAND RECLAMATION  
P. O. DRAWER 900; BIG STONE GAP, VA 24219  
TELEPHONE: (276) 523-8157

### Informal Hearing Determination

**Company:** Barnette Energy, L.L.C. **Permit No.:** 900314Z  
**Subject:** CO# HNM0003605 Violation 1 of 1 (MP)  
**Hearing:** July 6, 2010 at 10:00 a.m. **Location:** Mine site  
**Participants:** David Barnette and Chris Perry for Barnette Energy, LLC; Heather McDonald-Taylor, DMLR

### Summary of Informal Hearing

An informal hearing was conducted at the minesite to review the issuance of cessation order #HNM0003605 issued to Barnette Energy LLC for conducting surface mining operations without first obtaining a permit and cessation of coal production was ordered. Mr. Chris Perry provided a letter (attachment A) to the Hearing Officer outlining Barnette Energy's position with regard to the issuance of the cessation order. A letter from Gus Hill to DMME (attachment B) was also submitted at the hearing. This letter explained Mr. Hill's role in the event that lead to the issuance of this CO.

A second CO #HNM0003611 was issued to Horace Garrison Hill Disturbance #900425Z (Attachment C) for conducting mining operations on the Barnette Energy Quarry site and the associated inspection report (Attachment C1).

Barnette Energy LLC has a 16 2/3 exemption on this site. This exemption allows for the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3% of the total tonnage of coal and other minerals removed for the purposes of commercial use or sale.

There were not any issues raised whether Mr. Hill's activities exceeding the scope of the 16 2/3 exemption that was granted to Barnette Energy by DMLR. The purposeful removal of coal outside the incidental removal in the course of the normal mineral mining operation clearly exceeds the scope of the exemption granted by DMLR. The essential question, was the Barnette Energy operation separate from the operations carried out by Mr. Hill. Barnette Energy contends that it had nothing to do with nor had any control over the mining operations carried out by Mr. Hill on the exemption site.

Barnette Energy also argued that any violations at the site should be attributed to Mr. Hill. Mr. Hill submitted a letter stating that he was responsible for the recent problem and that he did not think he was doing anything wrong. Two separate cessation orders were issued: 1) Barnette Energy LLC #900314Z; 2) Horace Garrison Hill Disturbance #900425Z.


Ownership and Control is defined at 4VAC25-130-700.5(b)(6) of the Coal Surface Mining Reclamation Regulations:

(b) The following relationship is presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted: (6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

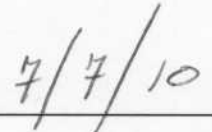
#### **Informal Hearing Recommendation**

This was an exempt sandstone quarry until the Mr. Hill initiated mining operations which were beyond the scope of the exemption granted by DMLR. Operations exceeding coal removal incidental to quarry operations makes this operation a coal surface mining operation. The question of ownership and control, in this instance, was moot because the site was exempt from the regulations. The question was moot until Mr. Hill's activities exceeded the scope of the exemption made Barnette Energy's operation a regulated activity. This was not an act of sabotage done without the knowledge of Barnette Energy. The evidence indicates there is a contractual relation between Barnette Energy and Mr. Hill. The written and oral testimony indicates that Mr. Hill has control of Barnette Energy as a "(b)(6) controller" under the definition of "ownership and control". Mr. Hill and Barnette Energy LLC were both cited with a cessation order for the mining at this site. The dual enforcement action to both parties was appropriate given the nature of the relationship as indicated by the evidence presented. It is my opinion CO3HNM0003605 was properly issued and I recommend that it be affirmed.

Informal Hearing Officer:

  
Michael A. Giles

Date:



ATTACHMENTS